

<sup>2</sup> The Board notes that, following the December 7, 2020 decision, OWCP received additional evidence. The Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the caserecord that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## **ISSUE**

The issue is whether appellant has met his burden of proof to establish a diagnosed medical condition causally related to the accepted October 9, 2020 employment incident.

## **FACTUAL HISTORY**

On October 18, 2020 appellant, then a 36-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on October 9, 2020 he experienced left lower abdominal and groin pain when he was kicked by a patient while in the performance of duty. On the reverse side of the claim form C.P., an employing establishment supervisor, acknowledged that appellant was kicked by a patient, but noted that there was no apparent injury. Appellant stopped work on October 9, 2020 and returned to work on October 12, 2020.

In support of his claim, appellant submitted a note dated October 9, 2020 signed by Dr. Rodney Wishnow, the employing establishment's acting chief of occupational medicine, finding that appellant was disabled from work beginning October 9, 2020 and could return to work on October 12, 2020.

In a November 5, 2020 development letter, OWCP informed appellant that the evidence it had received was insufficient to support his traumatic injury claim. It advised him of the type of evidence necessary to establish his claim and requested a narrative medical report from his treating physician containing a detailed description of findings and a diagnosis, explaining how his work activities caused, contributed to, or aggravated his medical condition. OWCP afforded appellant 30 days to submit the necessary evidence. No evidence was received.

By decision dated December 7, 2020, OWCP accepted that the October 9, 2020 employment incident occurred, as alleged. However, it denied appellant's traumatic injury claim, finding that he had not submitted medical evidence containing a medical diagnosis in connection with the accepted employment incident. Consequently, OWCP found that he had not met the requirements to establish an injury as defined by FECA.

## **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,<sup>4</sup> that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

employment injury.<sup>5</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>6</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.<sup>7</sup>

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.<sup>8</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and specific employment incident identified by the employee.<sup>9</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition causally related to the accepted October 9, 2020 employment incident.

In support of his claim, appellant submitted Dr. Wishnow's October 9, 2020 note, finding that appellant was disabled from work from October 9 to 12, 2021. However, Dr. Wishnow did not provide a medical diagnosis or provide an opinion on causal relationship between a diagnosed medical condition and the accepted employment incident. The Board has held that a medical report lacking a firm diagnosis and/or opinion on causal relationship is of no probative value.<sup>10</sup> As such, Dr. Wishnow's note is insufficient to meet appellant's burden of proof.

As there is no medical evidence of record establishing a diagnosed medical condition causally related to the accepted October 9, 2020 employment incident, the Board finds that appellant has not met his burden of proof.

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<sup>5</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>7</sup> *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>8</sup> *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>9</sup> *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>10</sup> *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

**CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition causally related to the accepted October 9, 2020 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 7, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 14, 2021  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board